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6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

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9)
10 *In re* USA COMMERCIAL MORTGAGE CO.,)

11 Debtor.)

12 3685 SAN FERNANDO LENDERS, LLC et al.,)

13 Plaintiffs,)

14 vs.)

15 COMPASS USA SPE LLC, et al.,)

16 Defendants.)
17 _____)

2:07-cv-00892-RCJ-GWF

ORDER

18 This case arises out of the attempts of certain direct lenders to terminate a bankrupt entity
19 and its assigns—one of whom is now itself bankrupt—as loan servicers. Pending before the
20 Court are three Proposed Final Judgments (ECF Nos. 2297, 2307, 2309).

21 **I. FACTS AND PROCEDURAL HISTORY**

22 USA Commercial Mortgage Co. (“USA Commercial”) was a loan servicing company that
23 went bankrupt. At an auction pursuant to those bankruptcy proceedings, Compass USA SPE,
24 LLC (“Compass”) purchased USA Commercial’s interest in thousands of Loan Servicing
25 Agreements (“LSA”). Those LSAs were contracts between USA Commercial and various

1 financial institutions and individuals (“Direct Lenders”) that had lent money for the purchase of
2 commercial real estate. The LSAs gave USA Commercial the right to administer the loans on
3 behalf of the Direct Lenders. Silar Advisors, LP and Silar Special Opportunities Fund, LP
4 (collectively, “Silar”) financed Compass’s purchase of the LSAs, retaining a security interest in
5 the LSAs. Silar later assigned the loan and corresponding security interest in the LSAs to Asset
6 Resolution, LLC, an entity created and owned by Silar for this purpose. Asset Resolution
7 eventually foreclosed on the LSAs.

8 Certain Direct Lenders subsequently formed various companies (“the LLCs”), who along
9 with the Jones Vargas Direct Lenders sued Compass in this Court to determine their rights and
10 obligations under the LSAs and for various torts. Asset Resolution and Silar intervened, and
11 soon thereafter they filed an Amended Answer to the Second Amended Complaint and Asset
12 Resolution, LLC’s Counterclaims. Those counterclaims, brought against approximately
13 sixty-five Counterdefendants, were for declaratory judgment, breach of contract, breach of the
14 covenant of good faith and fair dealing, permanent injunction, and quantum meruit.

15 Further complicating matters, on October 14, 2009, Asset Resolution and Silar filed a
16 Notice of Commencement of Chapter 11 Bankruptcy Cases, indicating that Asset Resolution, but
17 not Silar itself, had filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the
18 Southern District of New York. On November 24, 2009, the Bankruptcy Court for the Southern
19 District of New York granted a motion for transfer of venue, transferring the bankruptcy action to
20 the Bankruptcy Court for the District of Nevada. This Court withdrew the bankruptcy
21 proceedings from the Bankruptcy Court and converted Asset Resolution’s bankruptcy to Chapter
22 7, which rulings have been affirmed by the Court of Appeals.

23 A jury awarded approximately fifty Plaintiffs over \$5 million in damages in December
24 2010. The Court ruled on several post-trial motions in August 2011. On September 6, 2012, the
25 Court entered an Agreed Order Regarding Settlement and Related Relief (the “Agreed Order”) in

1 the *In re Asset Resolution* Chapter 7 bankruptcy case. (See ECF No. 1915 in Case No. 09-bk-
2 32824). Pursuant to that order, Plaintiffs have filed three proposed orders in the present case.

3 **II. DISCUSSION**

4 First, Plaintiffs asked the Court to enter final judgment against Silar, Asset Resolution,
5 and Boris Piskun. (See ECF No. 2297). Some non-parties objected to the form of the proposed
6 judgment, because it purported to extend the effect of certain language in the Agreed Order
7 beyond the parties to the present case. Plaintiffs submitted a revised proposed judgment to which
8 no party has objected. (See ECF No. 2307). The Court will enter that proposed judgment.

9 Second, Plaintiffs ask the Court to enter final judgment against Compass and David Blatt.
10 (See ECF No. 2309). Compass and Blatt have objected to the form of the proposed judgment
11 because: (1) the proposed judgment contains recitals of prior pleadings in violation of Rule 54(a);
12 (2) footnote 1 indicates that although Compass and Blatt had defaulted, they were permitted to
13 dispute damages at trial, and that the judgment is therefore “final” not “default”; (3) the proposed
14 judgment purports to award damages to ten putative plaintiffs not listed in the Second Amended
15 Complaint; (4) the proposed judgment fails to note that the dismissed former LLC Plaintiffs
16 should take nothing; and (5) line 15 of page 25 is blank with respect to the interest rate.

17 Plaintiffs reply that: (1) the first objection can be cured by entering the proposed
18 judgment as a memorandum opinion and order and then entering a separate final judgment
19 incorporating it; (2) the second objection can be cured by deleting the second sentence of
20 footnote 1; (3) the ten objected-to Plaintiffs were named in the Third Amended Complaint; (4)
21 the former Plaintiff LLCs should indeed take nothing; and (5) the Court should fill in the blank
22 on line 15 of page 25 with the applicable post-judgment interest rate. Compass and Blatt reply
23 that they still object to the inclusion of the ten Plaintiffs they noted in their objection because
24 they were never served with the Third Amended Complaint but defaulted on the Second
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1 Amended Complaint. The Court sustains the objection to the ten additional Plaintiffs¹ but
2 otherwise agrees with Plaintiffs' proposed resolutions as stated in their reply.

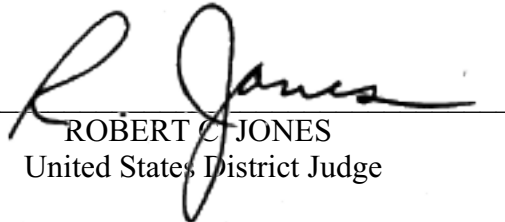
3 The Court will not enter the proposed judgments as written. Plaintiffs shall submit for
4 the Court's signature a proposed memorandum opinion and order (or orders) consistent with the
5 proposed final judgments already filed (ECF Nos. 2307 and 2309), but which incorporate the
6 changes Plaintiffs have recommended in reply to Compass's and Blatt's response, *supra*, as well
7 as a proposed final judgment (or judgments) that incorporates but does not recite those findings.

8 **CONCLUSION**

9 IT IS HEREBY ORDERED that the Proposed Final Judgments (ECF Nos. 2297, 2307,
10 2309) are DENIED.

11 IT IS SO ORDERED.

12 Dated this 25th day of April, 2013.

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15 ROBERT C. JONES
16 United States District Judge
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25 ¹Compass and Blatt are correct that the Court entered default against them as to the
Second Amended Complaint. (*See* Order, Jan. 25, 2010, ECF No. 1632).